

III. Remarks:

Concerns Relative to the Drawings:

The examiner expressed concern relative to the drawings, specifically because she feels that Figures 1A, 1B and 3 do not present information suitable for presentation in drawing form.

Response: In response, Figures 1A, 1B and 3 have been slightly amended (in non-substantive form) and renamed as Table 1, Table 2 and Table 3, respectively, and inserted into the specification as indicated above in the Amendments to the Specification section. Accordingly, references in the originally filed specification to Figures 1A, 1B and 3 have been amended so that reference is made to Table 1, Table 2, and Table 3. Additionally, the Figures have been renumbered accordingly; the originally filed figures are to be replaced with the figures as they now appear in the Appendix of this reply to office action. Additional changes to the specification have been made so that references to figures now remaining in the application are correct. It is not believed that any of these changes add new matter to the application, as the changes include merely changing the location and identification of certain parts of the originally filed application.

Concerns Relative to the Claims:

Concerns under 35 U.S.C. §112: The examiner expressed concern that the claims lack adequate descriptive support in the specification because of the use of the appearance in independent claims of certain trademarks, specifically “Heritage Complete™”, “Heritage Gold™”, “Heritage Osteoguard™”, and “Heritage Platinum™”. More particularly, the examiner expressed concern that these terms “are not clearly described in the instantly filed specification in terms of how they are made and what the precise components are and in what amounts, etc.” (see Office Action of May 8, 2006).

Response: In response, the Applicant explains that these terms are used to identify the source/origin of certain products, and that these products are thoroughly described in the specification as originally filed, as follows:

The product whose source/origin is identified by the trademark Heritage CompleteTM (claims 1, 9, 17, 23 and dependents) is adequately described in originally filed Figure 1A (now referred to as Table 1).

The product whose source/origin is identified by the trademark Heritage GoldTM (claims 1, 9, 17, 23 and dependents) is adequately described in originally filed Figure 1A (now referred to as Table 1).

The product whose source/origin is identified by the trademark Heritage OsteoguardTM (claims 1, 9, 17, 23 and dependents) is adequately described in originally filed Figure 1A (now referred to as Table 1).

The product whose source/origin is identified by the trademark Heritage PlatinumTM (claims 1, 9, 17, 23 and dependents) is adequately described in originally filed Figure 1A (now referred to as Table 1).

As follows, the products whose source/origin is identified by other trademarks appearing in the claims are also adequately described in the specification as originally filed:

The product whose source/origin is identified by the trademark Heritage Omega-3 OilTM (claims 5, 13, 19 and any dependent claims) is adequately described in originally filed Figure 1A (now referred to as Table 1).

The product whose source/origin is identified by the trademark Dino BitesTM (claims 5, 13, 19 and any dependent claims) is adequately described in originally filed Figure 1A (now referred to as Table 1).

The product whose source/origin is identified by the trademark Heritage Cat's ClawTM (claims 5, 9, 13, 17, 19, 22 and any dependent claims) is adequately described in originally filed Figure 1A (now referred to as Table 1).

Nonetheless, the Applicant has amended the independent claims (claims 1, 9, 17 and 23) that contain trademarks to replace such trademarks with the ingredients of the products whose source/origin they identify. The support for such amendments is provided by the originally filed specification. In particular, the support is provided in what is now referred to as Table 1, as indicated immediately above. Dependent claims originally filed with trademarks have been canceled.

Concerns under 35 U.S.C. §103: The examiner expressed concern under 35 U.S.C. §103 as to claims 1-30 based on US Pat. No. 6,949,264 (the McGrew et al. patent), US Pat. No. 6,506,413 (the Ramackers patent), US Pat. No. 5,536,523 (the Blauel et al. patent), US Pat. No. 6,133,317 (the Hart patent), and US Pat. No. 7,005,513 (the Yura et al patent).

The Pending Claims as Amended are Not Prima Facie Obvious: Assignee first submits that the claims remaining in this case for examination at this time (claims 1-30), are not *prima facie* obvious. As the Examiner is well aware, “[T]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.” MPEP 2142. The MPEP goes on to state that “To establish a *prima facie* case of obviousness, three basic criteria must be met:

[1] First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.

[2] Second, there must be a reasonable expectation of success.

[3] Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.”

MPEP 2143, Basic Requirements of a *Prima Facie* Case of Obviousness. Assignee submits that none of these three criteria can not be met with respect to the 35 U.S.C. §103 and explains its position as follows:

The Prior Art Reference Does Not Teach or Suggest All Claim Limitations of the Pending Claims: None of the cited references, either alone or in combination (i.e., none of: McGrew et al, US 6,949,264; Ramackers, US 6,506,413; Blauel et al, US 5536,523; Hart, US 6,133,317; or Yura et al, US 7,005,513) discloses, teaches or suggests all limitations of any of the claims as they now stand. For example, the following are limits of each of the independent claims now at issue (claims 1, 9, 17 and 23) that are not disclosed in any of the cited references: PABA, octosanol, chlorella, papain, rutin, coenzyme Q10, hydroxyadpatite citrate, pine bark extract, rutin, quercetin, pancreatin, lactase, lipase, amylase, catalase, chrymortypsin, trypsin, cellulase, and zinc gluconate. These substances simply do not appear in any of the five patent references relied on by the examiner. As such, a *prima facie* case of obviousness is not supported. For these reasons, the Applicant respectfully explains that the Office has not met its burden relative to obviousness.

Further, the Examiner indicates that “it would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to combine the cited references … in order to provide for a health enhancement system....” However, such an “obvious to combine” concern presumes, of course, that the cited references disclose all claim elements in combination, and as explained above, the cited references clearly do not. The Applicant would add that an “obvious to try” rejection certainly cannot be maintained where, as here, there is no suggestion “to modify the reference or to combine reference teachings” (see MPEP 2143, the first requirement for a *prima facie* case of obviousness).

Other Amendments Made to the Application at This Time:

The Applicant has also taken this opportunity to make other amendments to the description section of the specification. Specifically, such amendments, as found on pages 6 and 7, are made to more properly use trademarks.

Additional Information:

Importantly, it should be understood that the amendments submitted herein are made as a matter of practicality only, and should not be construed as creating any situation of file wrapper estoppel or the like as all rights are expressly reserved and may be pursued in this or other applications, such as divisionals, continuations, or continuations-in-part if desired. Amendments are made for tangential issues of clarity and as a matter of the Office's convenience or expedience only. The amendments should not be interpreted as an action that in any way surrenders a particular equivalency, surrenders any right to patent coverage, or otherwise limits any rights that the Applicant may now or hereafter assert. It should be understood that, unless and to the extent deemed broadened by this amendment, and even as amended, the Applicant expressly reserves all rights, including but not limited to: all rights to maintain the scope of literal coverage with respect to any element as may have existed under the language previously presented, all rights to maintain the scope of equivalency coverage as may have existed under the language previously presented, and all rights to re-present the prior language at any time in this or any subsequent application. To the extent currently foreseeable, no change or reduction in *direct or* equivalency coverage is believed to exist, and no change or reduction in *direct or* equivalency coverage is intended through the presentation of this amendment.

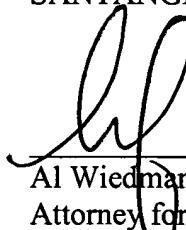
IV. Conclusion

In a May 8, 2003 office action communication, the Office raised concerns under 35 USC §§112 and 103 as to claims 1-30 based on certain patent references. The Office also raised certain concerns relative to the drawings. The Applicant submits this amendment and request for reconsideration to fully address the Office's May 8, 2006 office action. The Assignee submits this amendment and request for reconsideration to fully address the Office's action. Please amend the above identified application according to the attached specification and claim amendments, in addition to replacing the originally filed drawings with those appearing in the Appendix of this reply. The Assignee believes all concerns have been addressed and that all claims remaining in the case – claims 1-30 – are in condition for allowance. Reconsideration and allowance of these remaining claims is respectfully requested at the Examiner's earliest convenience. Finally, should the Examiner have any remaining questions or disagree with any of Assignee's explanations, it is requested that the Examiner contact the undersigned by telephone in order to expedite the processing of this application.

Dated this 8 day of August, 2006.

Respectfully submitted,

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IN THE UNITED STATES PATENT AND
TRADEMARK OFFICE

In Re the Application of: Karl W. Schakel
Serial Number: 10/612,321
Filed: July 1, 2003
Title: Health Enhancement System
TC/A.U: 1651
Examiner: Deborah K. Ware
Attorney Docket: Schakel-NonProv
Customer No.: 33549

Exhibit A

4 sheets of Replacement Drawings